Supreme Court, U.S.
F I L E D
JAN 29 1996

No. 95-527

In the
Supreme Court of the United States
October Term, 1995

The Freedom From Religion Foundation, Inc., a Wisconsin nonprofit Corporation; The Colorado Chapter of the Freedom From Religion Foundation, Inc.; Jeff Baysinger; Harold Huguley; Glenn V. Smith; and Lee Whitfield,

Petitioners,

v.

The State of Colorado; The Honorable Roy Romer, Governor of the State of Colorado; The Colorado Department of Administration; and Forrest M. Cason, Executive Director of the Dept. of Administration,

Respondents.

On Petition for Writ of Certiorari
to the Supreme Court, State of Colorado

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Pursuant to Rule 15.6 of the Rules of the Supreme Court of the United States, Petitioners respectfully reply to the Respondents' Brief in Opposition to the Petition for Writ of Certiorari.

THE MONUMENT PRESENTS THE TEN COMMANDMENTS IN A RELIGIOUS, NOT A SECULAR, CONTEXT

The Opposition filed by the Respondents should not cause this Court to lose sight of the basic issues in this case. The Ten Commandments monument here involved was donated to the State of Colorado by the Fraternal Order of Eagles for the purpose of instilling the principles of God's message to Moses in youth. App. E8-E9. The monument sits in a public park immediately west of the State Capitol building along with several other monuments, all of which relate to war and armed conflict. App. E4-E6.

This is not a case where the Ten Commandments are displayed in a museum as part of our religious history. Nor is it a case where the role of the Ten Commandments in the development of our legal system is highlighted. There is not even a hint of a countervailing secular message on the monument to detract from the religious impact of the sacred text. The only message conveyed by the monument is religious; its placement in a public park unmistakably signifies official government endorsement of religion.

REPLY TO RESPONDENTS' ALLEGED MISSTATEMENTS OF FACT

For the record, Petitioners hereby address the Respondents' alleged misstatements of fact in the order presented by Respondents:

The Petition's description of the Ten Commandments monument is accurate. This is readily verified by examining Appendix S1 to the Petition which is a large color photograph of the monument.

The Petition was correct in describing the Ten Commandments as exhoratory. By their nature, they urge or strongly advise compliance.

The Ten Commandments are a sacred text. Contrary to the conclusions reached by the Court below, the monument does not reflect secularism. The only identifiable secular symbols on the monument are the American flag and bald eagle which denote governmental approval and are, therefore, objectionable. See App. S1.

The Court below found that various local chapters of the Fraternal Order of Eagles donated monuments to several local and state governments. App. E9. The Petition concludes, and logically so, that a number of similar monuments are located on public grounds around the United States. Indeed, one such monument was the subject of litigation in *Anderson v. Salt Lake City Corporation*, 475 F.2d 29 (10th Cir. 1973), *cert. den.* 414 U.S. 879 (1973).

The Petition characterizes the nationwide campaign to erect Ten Commandments monuments as intended to instill the principles of God's Message to Moses in youngsters. Respondents object, citing the lower court's statement that the program "was not to be a religious instruction of any kind." App. E8. This objection is curious considering that biblical history teaches that the Ten Commandments were given by God to Moses and that the first three commandments are wholly religious and have no discernible secular significance. See App. S1.

The record in this case clearly shows that the monument is owned by the State of Colorado and that it is maintained by the State. See App. E9. Contrary to Respondents' assertion (Opp., p.2), there is no evidence in the record that the State would have recourse to the Fraternal Order of Eagles if the monument is in need of repair. The testimony cited by Respondents stated instead that, if the monument were badly damaged, the State would ask the Eagles to repair it but that, if the Eagles said "no", the monument "would probably not be repaired". R. Vol. 3, p. 69, ll. 4-25.

The remainder of Respondents' alleged misstatements have to do with conclusions which are at issue in this lawsuit. The Court below concluded that the monument's content and setting sufficiently neutralize its religious character. Petitioners vigorously disagree with this conclusion. The closest of any of the alleged "neutralizing" monuments is about thirty feet away. The next closest monument is some fifty feet away in the opposite direction. App. E6. Given this, it was correct for Petitioners to say that there is nothing in the "immediate vicinity" of the Ten Commandments monument. Pet., p.6. Further, the Petition is correct in stating that none of the other objects in the park are relevant to the Ten Commandments monument or, in any way, negate its religious message. Pet., p.6.

THE PETITION COMPLIES FULLY WITH THE COURT'S RULES

Respondents claim that the Petition does not meet the requirements of the Court's revised Rules which went into effect on October 2, 1995. The Petition was filed on September 27, 1995 and, therefore, the old Rules applied. Undersigned Counsel was advised to this effect by the Court Clerk's office.

Whether under the old or the new Rules, however, this Court should grant certiorari. The decision of the Court below is in direct conflict with published decisions of this Court in *Allegheny County v. Greater Pittsburgh ACLU*, 492 U.S. 573 (1989) and *Stone v. Graham*, 449 U.S. 39 (1980), *reh. den.* 449 U.S. 1104 (1981) and with the Eleventh Circuit Court of Appeals in *Harvey v. Cobb County, Ga.*, 811 F.Supp 669 (N.D.Ga. 1993), *aff'd.* 15 F.3rd 1097 (11th Cir. 1994), *cert. den.* ____ U.S. ____, 114 S.Ct. 2138 (1994).

CONCLUSION

This Court should order the monument to be removed. If it does not, it will effectively be sanctioning the indiscriminate placement of religious symbols on public property.

Respectfully submitted,

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January 29, 1996